

1 UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON AT TACOMA

2 UNITED STATES OF AMERICA,  
3 Plaintiff,

Case No. MJ19-5026

4 v.

DETENTION ORDER

5 MICHAEL G. McPHERSON,  
Defendant.

6 THE COURT, having conducted a detention hearing pursuant to 18 U.S.C. Sect. 3142, finds that: no condition or  
7 combination of conditions will reasonably assure the appearance of the defendant as required and/or the safety of any  
other person and the community. 18 U.S.C. Sect. 3142(e),(g).

8 The Court did not consider the Government's proffer of the possible assets that the defendant may have  
acquired through gambling at casinos.

9 A presumption of detention – under 18 U.S.C. Sect. 3142(e)(3)(A), and Sect. 3142(e)(3)(B) -- applies in this  
situation, because the defendant is charged with Possession with Intent to Distribute of Methamphetamine and Heroin,  
involving 50 grams or more of methamphetamine, its salts, isomers, and salts of its isomers, under 21 U.S.C. Sect.  
841(a)(1), 841(b)(1)(A), and 841(b)(1)(C). Dkt. 1, Complaint at 2-3 -- and the defendant is also charged with Possession of a  
10 Firearm in Furtherance of a Drug Trafficking Crime, under 8 U.S.C. Sect. 924(c)(1)(A)(i) and 2. Dkt. 1 at 3. The defendant  
has not overcome the presumption.

11 The government met its burden of proving by a preponderance of the evidence that the defendant presents a  
significant risk of non-appearance based on the defendant's history concerning failure to follow court orders. Dkt. 10,  
First Supplemental Pretrial Services Report at 2-3, 5-6. The proposed placement at the residence of the defendant's  
12 mother is the same residence where he was ordered to reside when the Pierce County Superior Court released him on bail  
with conditions. According to the Supplemental Pretrial Services Report, and the Government's proffer, the defendant  
13 failed to live at his mother's residence in 2019, violating Pierce County Superior Court's order of release dated September  
25, 2018. *Id.* at 2, 6-7.

14 The Court also finds the government met its burden of proving by clear and convincing evidence that the  
defendant presents a significant risk of danger to others and to the community. As the Government pointed out during the  
detention hearing, the defendant was involved with a drug distribution effort – during a search of his residence in Bonney  
15 Lake, Washington (not the residence of his mother, but the another residence where he was residing on September 12,  
2018) the investigators seized from the defendant's bedroom more than 100 grams of heroin and more than 100 grams of  
16 methamphetamine. Dkt. 1, Complaint at 5. Also seized by the authorities during the search of the defendant's residence:  
several firearms, ammunition, cash, records associated with logging drugs bought and sold, suspected drug scales and  
17 packaging. Dkt. 1 at 5-6. In addition, the Government's attorney stated during the hearing – and the Supplemental  
Pretrial Services Report also indicates -- that after the events in September of 2018 that resulted in charges in this case,  
more search warrants were executed, and from those searches of the defendant's vehicles, a storage unit, and his current  
18 2019 address (not his mother's residence) in Federal Way, Washington, the agents discovered additional weapons,  
ammunition, and also body armor. Dkt. 10 at 2-3, 7.

19 Even with conditions by which the defendant's whereabouts could potentially be monitored, the Court finds that  
there are no conditions, or combination of conditions of release that would effectively mitigate the potential for danger to  
the community, or risk of non-appearance. Even with diligent supervision by United States Probation and Pretrial  
20 Services, including GPS electronic monitoring, every phone call to or from the defendant cannot be monitored. Nor would  
the probation and pretrial services professionals be able to control other people who might come to the residence where  
21 the defendant may be residing.

22 Although the defendant has positive relationships with his family, the proposed placement with his mother at her  
residence, under her supervision as a third party custodian, does not appear to be stable or reliable in terms of regulating  
his ability to control his behavior at this time. The defendant's mother, and sister, who reside at the mother's residence,  
23 work during the daytime. They would not be present to keep track of the defendant's activities during their working  
hours. The defendant has not had gainful, lawful employment since 2015. The circumstances of the current offense, and  
the more recent searches of his home, cars, and storage unit, shows extreme danger to the community because of the  
24 defendant's alleged possession of numerous firearms, and ammunition, and his involvement in possession with intent to  
distribute heroin and methamphetamine – illegal drugs with very destructive and addictive qualities. According to the  
Supplemental Pretrial Services Report, he has several criminal convictions – including Assault in the Fourth Degree,  
Controlled Substances Violations, Driving While Under the Influence, and Operating a Vehicle Without Ignition Interlock  
Device; he failed to follow court orders by failing to appear in 2009 and again in 2019; he had numerous bench warrants  
between 2007-2018; he also violated court-ordered conditions of a deferral in 2007, and violated court-ordered conditions

1 of release in 2016. And, he violated terms of his 2018 release on bond in Pierce County Superior Court by failing to reside  
2 at his mother's home in 2019. Dkt. 10, Supplemental Pretrial Services Report, at 3-7. The Government is not required to  
3 produce evidence of prior convictions for violent crimes, nor is the Court required to rely on such evidence, when making  
4 a determination of the defendant's potential for serious risk of dangerousness. *United States v. Hir*, 571 F.3d 1081, 1091-92  
(9<sup>th</sup> Cir. 2008); *United States v. Rodriguez*, 950 F.2d 85, 88-89 (2d Cir. 1991).

5 This finding, that the presumption of detention has not been overcome, is based on 1) the nature and circumstances of the  
6 offense(s) charged, 2) the history and characteristics of the person; and 3) the nature and seriousness of the danger release  
7 would impose to any person or the community; and (4) the potential for flight or failure to appear.

8 *Order of Detention*

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- 10 ▶ The defendant shall be committed to the custody of the Attorney General for confinement in a corrections facility  
11 separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending  
12 appeal.
  - 13 ▶ The defendant shall be afforded reasonable opportunity for private consultation with counsel.
  - 14 ▶ The defendant shall on order of a court of the United States or on request of an attorney for the Government, be  
15 delivered to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

16 March 27, 2019

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Theresa L. Fricke  
19 United States Magistrate Judge  
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